

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|-------------------------|---|-----------------------------|
| MNG 2005, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No.: 4:18-CV-01155-JAR |
| |) | |
| PAYMENTECH, LLC, et al, |) | |
| |) | |
| Defendants. |) | |

**DEFENDANT VISA U.S.A INC.'S
MOTION TO DISMISS FIRST AMENDED COMPLAINT**

COMES NOW Defendant Visa U.S.A. Inc. (“Visa”), through counsel, and moves pursuant to Fed. R. Civ. P. 12(b)(6) for an order dismissing Counts IV and VI of the First Amended Complaint (“Complaint”). In support of this motion, Visa states the following:

1. The claims against Visa in this lawsuit are ancillary to Plaintiff MNG 2005, Inc.’s (“Plaintiff”) claims against Defendant Paymentech, LLC (“Paymentech”). The core of this lawsuit is Plaintiff’s claim that Paymentech breached the parties’ Merchant Agreement by terminating it without advanced notice and by retaining funds belonging to Plaintiff in a reserve account.

2. The claims against Visa in the Complaint—Breach of Contract (Count IV) and Tortious Interference (Count VI)—are deficient and should be dismissed for the following reasons:

a. Plaintiff has not alleged facts plausibly establishing the existence of a valid and enforceable contract between it and Visa.

b. Plaintiff fails to plead that Visa had any knowledge of the contract it allegedly interfered with between Plaintiff and SignaPay, and Plaintiff fails to plead any facts plausibly establishing Visa intentionally interfered with any purported contract between Plaintiff and SignaPay.

3. Visa's arguments in support of its Motion are more fully set out in its contemporaneously filed Memorandum in Support of Motion to Dismiss and Exhibits 1 and 2.

WHEREFORE, Defendant Visa U.S.A. Inc. respectfully requests the Court enter an order dismissing the Counts IV and VI of the First Amended Complaint, and grant such other and further relief as it deems necessary and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By /s/ David M. Mangian

Christopher M. Hohn, #44124MO

David M. Mangian, # 61728MO

One US Bank Plaza

St. Louis, Missouri 63101

314-552-6000

FAX 314-552-7000

chohn@thompsoncoburn.com

dmangian@thompsoncoburn.com

Attorneys for Defendant Visa U.S.A. Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2018, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system to all counsel of record.

/s/ David M. Mangian